

INFORMATION PAPER

DAJA-LA
19 June 2000

SUBJECT: Estate Planning Checklist for Service Members Preparing for Retirement

1. Purpose. To provide information about the most common legal issues you should consider when planning your estate.

2. Facts.

a. Wills: You may want to prepare a will or review your existing will for changes.

(1) A will is important for these reasons:

(a) You can designate your heirs. If you die without a will (i.e., "intestate"), state law determines who inherits your probate estate.

(b) You can name your personal representative (executor) and waive bonds otherwise required.

(c) You can establish a testamentary trust for children/grandchildren.

(d) If your estate is subject to federal estate taxes (gross estate greater than \$675,000 in 2000, increasing to \$1,000,000 in 2006), you should consult an estate planning specialist to prepare a will for you and your spouse, which may save your estate from paying federal estate taxes. Most estate planning to avoid or reduce federal estate taxes should be done while both spouses are living. There are few opportunities for estate tax savings after one of the spouses dies and the entire estate has passed to the surviving spouse.

(2) If you are changing your state of domicile or residence as discussed above, you may want to delay signing a new will until after you retire; this may aid in protecting your active duty pay under the SSCRA for income tax purposes.

b. Trusts: Trusts can be a valuable tool in estate planning, depending upon the size of the estate and your estate planning goals. Trusts can be revocable or irrevocable. They can be used to avoid probate, plan for your future care, or reduce estate taxes. Reasons for creating the trust influence which type to use. Some service members create a trust merely to avoid probate. However, the cost to create the trust may be more than the cost of probate. For those service members with estates subject to payment of estate taxes, a properly drafted trust may provide estate tax savings. Trusts are subject to state laws and must be constructed carefully.

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c. Advance Medical Directives (AMD): Most states have a statutory form you may use to direct your physician to withhold certain life support procedures if you are terminally ill. This is called a Directive to Physicians or Living Will. Some states include in the Directive to Physicians a Durable Power of Attorney for Health Care (DPoAHC) in which you name an individual to make health care decisions for you if you are incapable of making these decisions for yourself. In other states, the DPoAHC is a separate document. The Directive to Physicians and the DPoAHC are called Advance Medical Directives (AMD) because you prepare them in advance of your need for medical care. Federal law now recognizes AMDs prepared in military legal assistance offices even if not on a particular state's form. You may, however, desire to use a state form if you will receive medical treatment in a civilian facility.

d. Durable Power of Attorney: Normally, a Power of Attorney for other than health care does not remain in effect upon your disability (e.g., you become unconscious and cannot manage your own affairs) unless you make it a "durable" power of attorney by including the proper language within the document. Where you are providing a power of attorney to your spouse, you should use a durable power of attorney.

e. Survivor Benefit Plan (SBP): Do you want the SBP and/or a private insurance/annuity plan for your spouse? The Army and Air Force Mutual Aid Association and other organizations use computer programs that may help you compare the SBP options. Your SBP counselor will also provide you with information about SBP and the SBP Supplement.

f. Tricare/CHAMPUS Supplement: Upon retirement you will no longer be automatically enrolled in Tricare Prime. Enrollment in Tricare Prime carries an annual cost of \$460 for a family and \$230 for an individual. You will be enrolled in Tricare Standard at no cost. Deductibles and copayments under Tricare Standard are greater than under Tricare Prime. You may want to consider whether you need to purchase a health care supplement plan. Private organizations or associations with a military membership provide such supplements to their members and they can provide you with information regarding their plans. The 8 March 1999 *Army Times* also compared such supplemental plans.

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